IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
CASE NO.: 97-5968-CI-11

JOHN EASTMAN,

Plaintiff,

vs.

BROWN & WILLIAMSON TOBACCO CORP., individually and as successor by merger to THE AMERICAN TOBACCO COMPANY, a foreign corporation; PHILIP MORRIS, INCORPORATED, a foreign corporation,

Defendants.

BEFORE: HONORABLE ANTHONY RONDOLINO
PLACE: The Judicial Building
545 First Avenue North
St. Petersburg, Florida
DATE: Wednesday, March 26, 2003
TIME: 8:30 a.m. - 11:42 a.m.
REPORTED BY: BETH L. BILLINGS, RPR
Court Reporter and Notary Public
Sixth Judicial Circuit

TESTIMONY AND PROCEEDINGS

Volume 26 Pages 2867 - 2934

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I N D E X T O P R O C E E D I N G S

Witness or Proceedings Page

ROBERT B. BURCHETTE
Cross-Examination Ms. Faggianelli 2870

DR. PETER LIPOWICZ (By Deposition) 2912

(8:29 a.m.) P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good morning.

MR. PARRISH: Good morning.

THE COURT: Mr. Acosta, you ready to go?

MR. ACOSTA: Yes, sir. I think the defense has some cross-examination they want to read first.

THE COURT: Okay.

MS. FAGGIANELLI: Very brief.

THE COURT: Okay. Let's bring in the jury, please.

THE BAILIFF: Okay.

(The following took place in the presence and hearing of the jury.)

THE BAILIFF: The jury is present and seated,

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Your Honor.
THE COURT: Thank you, Sheriff.
Let's proceed with the cross-examination from Dr. Burchett's deposition.

Thereupon,

ROBERT B. BURCHETTE,

was called as a witness by deposition and testified as follows:

CROSS-EXAMINATION

MS. FAGGIANELLI: "QUESTION: When you saw Mr. Eastman on March 20, 1997, did he report to you

any change in use of medications?
"ANSWER: He reported that he stopped the Prozac.
"QUESTION: What did he -- what do you have documented there about why he stopped taking Prozak?
"ANSWER: He did not like the side effects. He feels complacent, decreased energy. He does not feel depressed anymore.
"QUESTION: Do all smokers get chronic obstructive pulmonary disease?
"ANSWER: They do not. Well, no. Simple answer.
"QUESTION: Are you familiar with statistics that suggest that only 10 to 15 percent of smokers are diagnosed with clinically significant COPD?
"ANSWER: Depends on how you define clinically significant, I guess. Yes. Simple answer, yes.
"QUESTION: In your own practice I believe you testified that you have patients who present with COPD who have never smoked; is that correct?
"ANSWER: Yes.
"QUESTION: In a patient such as Mr. Eastman, would you characterize his ongoing use of having two beers every day as something that was

beneficial to him?
"ANSWER: No.
"QUESTION: 0038 is the document. And this is Dr. Modh's October 16, 1996, report to you following his consultation, correct?
"ANSWER: Yes.
"QUESTION: And while we have that note in front of us, I don't want to belabor this, but Mr. Acosta asked a couple of questions about it. On that date what did -- based upon your understanding of Dr. Modh's dictated report back to you, what did Dr. Modh advise Mr. Eastman with respect to the use of alcohol?
"ANSWER: 'Stop alcohol altogether completely, which will probably benefit him tremendously.'
"QUESTION: If a patient had a decreased lung reserve due to an unknown underlying pulmonary disease and they weren't aware of it because they were a sedentary person, what would you expect the clinical consequences of bilateral rib fractures treated with a rib belt to do?
"ANSWER: Long term -- you mean acutely or long term?
"QUESTION: Acutely. Acutely. If a patient was on the borderline, had a loss of reserve and

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they had rib fractures and that was treated with a rib belt, what would you expect to occur in that patient?

"ANSWER: I would expect them to get in trouble, become dys -- dyspneic and not tolerate that.

"QUESTION: Why?

"ANSWER: Because their reserve -- this is an insult to their reserve.

"QUESTION: And what about the injury and treatment I just described would cause those symptoms to develop?

"ANSWER: What about it?

"QUESTION: Right. What is it respect with respect to bilateral rib fractures and treatment with a rib belt?

"ANSWER: Rib fracture, people don't want to take a full inspiration because of the pain, and a rib belt also further restricts them getting the full inspiration and the same amount of oxygen that they would -- that a non-rib fracture patient would get."

MS. FAGGIANELLI: That's all we have, Your Honor.

THE COURT: Very well.

MR. ACOSTA: Your Honor, at this time the plaintiff would like to publish some exhibits already in evidence.

THE COURT: Very well.

MR. ACOSTA: And I will be using both the computer and the Elmo.

The first is Plaintiff's Exhibit 2636. Excuse me. 2272A, dated March 31st, 1954, from R. N. DuPuis to Mr. George Weissman, "Confidential. If we thought there was anything in any way harmful in cigarette smoke, we would go out of business, and that one way to fight the cancer scare was with increased publicity."

"It seems to me that it would have been more impressive to say that we do not believe that there is anything carcinogenic in smoke, but if evidence to the contrary is forthcoming, TIRC and our own research department are dedicated to removing it. Moreover, because it is not only good business but is our duty to our customers and stockholders, we are dedicated going beyond any efforts of TIRC, ACS or any other organization."

This is Plaintiff's Exhibit 2493, Philip Morris -- portions of Philip Morris's annual report from 1953, advertising and sales section.

I highlighted this one in blue instead of yellow.

Okay. Starting here, "When Lucy had her television baby on January 19th, approximately 44 million people watched Lucy go to the hospital. And the following week an even larger audience watched our commercials introducing Philip Morris King Size. Recognizing that almost everyone knows about Lucy and loves her, we signed a contract which insured our sole sponsorship of 'I Love Lucy'

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for two and one-half years. Our advertising messages through magazines, Sunday comics, daily newspapers, radio and television reach almost all of the forty-five million homes in America each week, totaling in fiscal 1953 more than three billion selling messages for Philip Morris, Dunhill and Marlboro cigarettes.

"Our sponsored programs are: Radio -- 'My Little Margie,' 'Philip Morris Playhouse,' 'I Love Lucy,' 'My Hero.'"

Next is Plaintiff's Exhibit 2636. It's from Weissman to Barton, Caspe, Oenz, Hyatt, Troxler, December 14th, 1953.

"As you know some highly controversial statements have been made by one or two doctors

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concerning the relationship of cigarette smoking and lung cancer and are having a very undesirable public relations effect on industry."

Down here at the last paragraph, "I need hardly say that no person in Philip Morris or any other cigarette company would engage in the manufacture or sale of cigarettes if we believed there was a sound basis to the statements being currently publicized.

"George Weissman."

I will go back to the computer.

Next is Plaintiff's Exhibit 50. "Philip Morris, Incorporated, Tobacco and Health-R&D Approach. Presentation to R&D Committee, by Dr. H. Wakeham, at meeting held in New York Office on November 15, 1961.

"Tobacco and Health-R&D Approach.

"The Cancer Controversy.

"Carcinogen - a substance which applied to the tissue of test -- of a test animal gives rise to tumor formation. In tests for carcinogens it is assumed that tumors ultimately lead to cancerous growths and that a carcinogen so demonstrated in test animals is dangerous to man.

"Tumor Promoter - a substance which by itself

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does not show carcinogenic activity but which applied before or concurrently with a carcinogen enhances the effect of the latter."

"Partial List of Compounds in Cigarette Smoke Also Identified as Carcinogens.

"Arsenic, benzo[a]pyrene, benzo[e]pyrene, benzo[c]pyrene, benzo[o]anthracene, benzo[k]fluoranthene, benzo[b]fluoranthene, benzene, p-benzoquinone, n-butyric acid, benzo[g,h,i]perylene, chrysene, chromium, cobalt, 5, 6-cyclopenteno-1, 2-benzanthracene; 6, 7-cyclopenteno-1, 2-benzanthracene; dibenz[a,h]anthracene, dibenz[a,j]acridine, 7H-Dibenzo[c,g]carbazole, dibenz[a,h]acridine, dibenzo[a,h]pyrene, 9, 10-dimethylbenzo[a]anthracene, diethylene glycol, a-dimethylchrysene, dibenzo[a,l]pyrene, dibenzo[a,i]pyrene, ethyl alcohol, fructose, glucose, lactic acid, 3-methyl-1,2-benzanthracene, 2-methyl-3,4-benzanthracene, nickel, 2 napathol, oleic acid, 1-proline, pyrrole, xylene,

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indeno[1,2,3-cd]pyrene, 3-methylprene."
"Cancer Promoting Agents in Cigarette Smoke."
"Some Promoting Agents.
"Phenols, liquid paraffin hydrocarbons,

organic acid esters, fats, oleates, cholesterol, benzene, iodoacatic acid, chloroacetophenone, proflavine, ethanolamine, turpentine."
"Smoking and Cardiovascular Diseases.
"Belief - cardiovascular ailments which may arise from smoking are due to the physiological effects of nicotine.
"Effects on the nervous systems giving rise to both stimulating and/or depressant symptoms on various body functions.
"Specific effects on adrenal medulla, causing it to discharge epinephrine, a hormone which accelerates the heartbeat, contracts, the peripheral blood vessels, and raises the blood pressure.
"Other complications:
"Low nicotine doses stimulate, but high doses depress functions.
"Continued usage develops tolerance.
"People vary greatly in their response to nicotine."
"Reduction of Irritating Factors in Smoke.
"This approach is based on the hypothesis that physiological irritations are a first step in the initiation of more serious ailments.

"Plan.
"Development of objective tests for irritation.
"Identification of irritating constituents.
"Selective elimination of irritants from smoke."
Next is Plaintiff's Exhibit 1645. This is an R. J. Reynolds document, author Alan Rodgman, September 28, 1956.
"Previous reports: RDM, 1955.
"The Analysis of Cigarette Smoke Condensate. The Isolation And/Or Identification of Polycyclic Aromatic Hydrocarbons in Camel Cigarettes Condensate.
"To describe the experimental investigation on the isolation and/or identification of several polycyclic aromatic hydrocarbons present in the cigarette smoke condensate from Camel blend tobacco.
"Summary: The five polycyclic aromatic hydrocarbons, naphthalene, anthracene, pyrene, fluoranthene and 3 4, benzpyrene, have been isolated and identified in the cigarette smoke condensate from Camel blend tobacco. These hydrocarbons were identified by standard chemical

techniques and conversion to one or more known derivatives.
"The six polycyclic hydrocarbons, phenanthrene, acenaphthylene, 3-methylprene, 1,2-benzanthracene, 1,2-benzoperylene and anthanthrene, have been identified as constituents

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of Camel cigarette smoke condensate on the basis of ultraviolet absorption spectra.

"Introduction.

"Statistical analysis based on retrospective, (18, 35, 51, 60, 66, 67, 71, 72, 74, 78, 95, 96, 97, 108, 110, 111, 117, 118) and prospective (36, 52) clinical studies have indicated that tobacco smoke, and in particular cigarette smoke, is a major causative factor in the present high and increasing incidence of cancer of the respiratory system in the human.

"There is evidence -- there is the evidence that cigarette smoking is an important factor in the production of squamous, oat-cell, and undifferentiated lung cancer. It is a reasonable presumption that the charges which have taken place in tobacco consumption in amount and in method are responsible for the major part of the real increase in mortality.

"Attempts to determine a particular constituent of cigarette smoke possibly responsible for the initiation of cancer of the lung have resulted in considerable investigation on the composition of cigarette smoke condensate. Animal data, employing various factors of cigarette smoke condensate have indicated that the major part of the carcinogenic activity of cigarette smoke condensate resides in the neutral fraction. The neutral fraction would normally contain the bulk of the polycyclic aromatic hydrocarbons, many of which are highly carcinogenic in experimental animals.

"In 1937, Roffo noted that the carcinogenic effect of tobacco tar (obtained by destructive distillation of tobacco) in rabbits and rats resembled the carcinogenic effects due to the action of 1, 2-benzanthracene, I, derivatives on these same species. Spectographic examination of various fractions of this tobacco tar indicated the presence of compounds containing 1, 2-benzanthrcene, I, nucleus.

IM 61 had also determined that the pyrolysis at 800 decrees C of the aliphatic hydrocarbons contained from tobacco yielded the polycyclic aromatic hydrocarbons; anthracene III, pyrene VIII,

naphthene I I I I, 1, 2-benzo[a]pyrene, XVI, and 3, 4-benzo[a]pyrene IV. The temperature of 800 degrees C is approximately that encountered during the normal cigarette smoking process.

"One of the major objections offered to previous investigations is that the identification of specific compounds solely on the basis of ultraviolet absorption studies is not definitive. Since the present research describes the actual isolation identification and characterization of several polycyclic aromatic hydrocarbons, including the highly carcinogenic 3, 4 benzo[a]pyrene, the major criticisms of past research are now nullified.

The major steps employed in this laboratory in the isolation of polycyclic aromatic hydrocarbons from Camel cigarette smoke condensate were as

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follows: Collection of the smoke condensate under smoking conditions simulating human smoking habits.

It has been demonstrated that the carcinogenic activity of the whole condensate, or the hexane soluble neutral fraction is apparently much greater than that due to the individual carcinogenic hydrocarbons; anthracene, pyrene, chrysene, 1, 2, benzanthracene and 3, 4 benzo[a]pyrene present.

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Three explanations of this apparent anomaly appear plausible at present.

The carcinogenic activity of the Benz -- or the hexane soluble neutral fraction or whole condensate is due mainly to some hitherto unknown powerfully carcinogenic polycyclic aromatic hydrocarbon.

2, a synergistic effect is obtained from the known hydrocarbons. This phenomenon has been described by numerous workers in the case of the polycyclic aromatic hydrocarbons.

Some compound present in the neutral fraction of cigarette smoke condensate is behaving as a cocarcinogen either for some compound in cigarette smoke or for some compound present as a pollutant in air. Since it is now well established that the cigarette smoke -- excuse me, since it is now well established that cigarette smoke does contain several polycyclic aromatic hydrocarbons and considering the potential and actual carcinogenic activity of a number of these compounds, a method of either complete removal or almost complete removal of these compounds from cigarette smoke is required."

Plaintiff's next exhibit is 1653. This is

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another R&J Reynolds memo. And of course the highlighting on these is mine. It's dated November 2nd, 1959. "The optimum composition of tobacco and its smoke. Historical, in 1954 the first report of the presence of a carcinogenic cancer producing polycyclic hydrocarbon, 3, 4, benzo[a]pyrene in cigarette smoke was published. Since then approximately 60 similar compounds have been isolated in the smoke of cigarettes. Eight of the polycyclic hydrocarbons isolated from the smoke are known to produce cancer in mice. Another five or six are suspect as cancer producing agents in laboratory animals.

Medical experience has shown that man responds to various chemical substances in the same manner as experimental animals. It follows therefore, that it would be better for the consumer if cigarette smoke were devoid of such compounds.

As described in RDR, 1956, No. 9, we in the R. J. Reynolds Tobacco Company Research Department corroborated the published findings with respect to 3, 4 benzo[a]pyrene, obtained this compound in crystallin form, and positively identified it as a constituent of cigarette smoke.

Some 30 odd polycyclic hydrocarbons have since

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been similarly characterized in these laboratories. Of the eight or carcinogenic to mouse epidermis.

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Cholanthrene, a potential carcinogen is one of three not yet reported by other investigators.

Discussion; the choice of the most appropriate approach was made after consideration of the following: In any discussion of smoke and its relation to health and smoking enjoyment, the question arises, "what is the optimum composition of cigarette smoke with respect to these factors?" This question may best be answered as follows: Cigarette smoke should contain as little as possible, preferably at the zero level, of the polycyclic hydrocarbons.

We consider the zero level to be impossible to achieve as long as the combustion temperature of the cigarette is greater than 700 degrees C.

Of the polycyclic hydrocarbons" -- excuse me, let me read it. "Cigarette smoke should contain as little as possible, preferably at the zero level of the polycyclic hydrocarbons, should possess satisfactory flavor to please the consumer, and should contain sufficient nicotine to supply the necessary requirements of the smoker with respect to this compound.

The physiological requirements of the smoker with respect to nicotine can be met by application of the optimum amount of nicotine to the extracted tobacco."

Next is Plaintiff's Exhibit 1379. This is a Philip Morris document. WL Dunn, Task Group Surrogate, March 5, 1964. "It has been proposed that R&D addressed itself to the development of a product which would meet the consumer needs currently being met by the conventional cigarette, while not possessing the properties that are alleged to have an adverse effect upon the health of the smoker. The most obvious approach would entail a systematic evaluation of all of the components of smoke, using a standard index of acceptability and deleting those not meeting minimal acceptability requirements. This we are technically unable to do.

Yet another strategy presents itself. If we abandon the usual conceptualization of the cigarette, we begin by defining the needs of the smoker which get more or less satisfied in the process of consuming a cigarette, or which at least are evocative of the act. From this we proceed to list the correlated functional properties of the

cigarette, which in effect are the psychological specifications of a product acceptable to the habitual smoker.

The pharmacological need is readily definable. The smoker seeks the subjective state that results from the introduction of nicotine into the bloodstream.

This brings us to a real problem. We are confronted with a fundamental conflict in product design. On the one hand, we are impelled to produce a cigarette or substitute which can win medical endorsement. To do so may require a departure so radical as to bring us under the

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surveillance of the FDA.

We can best summarize by listing the functional specifications of the ideal surrogate cigarette as the correlates of the needs which have been cited. It must induce psychopharmacological state -- excuse me, it must induce the psychopharmacological state now induced by nicotine absorption into the bloodstream."

I need the ELMO. Next is Plaintiff's Exhibit 2637. It's a Philip Morris document. It's from Wakeham to Millhiser, October 14th, 1969. Comments on the letter from Irving Zeldman, M.D. To

Mr. David R. Hardy.

Might I ask if there is a way to adjust this to bring up the blue? That's okay. All right.

I'm going to read this last paragraph, No. 5. "I would agree with Dr. Zeldman that the efforts of the tobacco industry through CTR and the American Medical Association have failed to involve the best investigators. At the beginning of our support of smoking and health research, this failure may have been connected with our consistent denial of the statistics and our continued assertion that there is nothing to the cigarette causation hypothesis. More recently I believe that very few investigators want to incur the criticism and ostracism of their fellow scientists to undertake research that espouses an unpopular subject.

Again, an attempt by the industry to solicit these investigations at this stage of the game may be too little and too late. It may be that supporting basic research at present would ultimately lead to the kind of results that Dr. Zeldman envisages, but I am not sanguine that the present attempts in this direction will be successful in the near future.

Next is Plaintiff's Exhibit 693/21. This is

and R. J. Reynolds document signed Claud E. Teague, Jr., December 10th, 1969. Titled "A New Product Strategy for Circumventing Problems Arising from the Smoking-Health Controversy." Examples of new product types contemplated, traditional tobacco burning."

THE COURT: Transitional?

MR. ACOSTA: Oh, transitional tobacco burning, sorry.

I need to go back to the -- next is Plaintiff's Exhibit 1606 "Why We're Dropping the New York Times", The American Tobacco Company. This is September 1969. "Last week the times said it would accept cigarette ads only if they contain a health caution notice and, two, tar and nicotine figures. We don't go along with this. We offer to take our ads -- we offered to take our ads off TV and radio because of the claim that those media unavoidably reach large numbers of children.

We did not take that action because we agree with the anti cigarette crusades, including the New York Times, who would like to blame cigarettes for the thousand and one ills that flesh is air to. Sure, there are statistics associating lung cancer

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and cigarettes, there are statistics associating

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lung cancer with divorce and even with lack of sleep. But no scientist has produced clinical or biological proof that cigarettes cause the diseases they are accused of causing. After 15 years of trying, nobody has induced lung cancer in animals with cigarette smoke.

We believe the anti cigarette theory is a bum wrap, and each time the Congress of the United States has held hearings on the cigarette controversy distinguished independent scientists have gone to Washington to say so. Therefore, we are not going to knuckle under to the Times or anybody else who tries to force us to accept a theory which in the opinion of men who should know is half baked.

In 1884, the New York Times said: "The decadence of Spain began when the Spanish adopted cigarettes, and if this pernicious practice obtains among adult Americans the ruin of the republic is close at hand. We think the New York Times was wrong in 1884, we think it was wrong in 1969."

Next is Plaintiff's Exhibit 1439. Motives and Incentives in Cigarette Smoking, Confidential, William L. Dunn, Jr., Philip Morris Research Center, Richmond, Virginia.

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"In January, 1972, the Dutch side of St. Martin was invaded by an unlikely party of 25 scientists. There were pharmacologists, sociologists, anthropologists, and a preponderance of psychologists. They came from England, Canada and the United States. Each brought with him a carefully prepared scientific paper which represented his best efforts at attacking the question "why do people smoke cigarettes?"

The St. Martin conference was called by the Council for Tobacco Research, USA in an effort to goad the scientific community and having another go at the problem. As with eating and copulating, so it is with smoking. The other physiological effect -- excuse me, the physiological effect serves as the primary incentive; all other incentives are secondary.

The cigarette should not -- excuse me -- the cigarette should be conceived not as a product but as a package. The product is nicotine. Think of the cigarette pack as a storage container for a day's supply of nicotine. It is unobtrusively portable. Its contents are instantly accessible. Think of the cigarette as a dispenser for a dose unit of nicotine.

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Think of a puff of smoke as the vehicle of nicotine: A convenient 35 cc mouthful contains approximately the right amount of nicotine. The smoker has wide latitude in further calibration: Puff volume, puff interval, depth, duration of inhalation".

Next is Plaintiff's 1474. Philip Morris USA interoffice correspondence. September 17, 1975, Marlboro, Marlboro Lights Study Delivery Data.

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"On January 3rd, 1975, a memo was sent to you concerning smoker profiles collected in the Marlboro, Marlboro Lights study. Since that time we have been able to use the smoker simulator in determining a series of TPM deliveries, included in these smokings were cigarettes from the study above.

The smoker profile data reported earlier indicated that Marlboro Lights cigarettes were not smoked like regular Marlboros. There were differences in the size and frequency of the puffs. With larger volumes taken on Marlboro Lights by both regular Marlboro smokers and Marlboro Light smokers. There were a total of nine smokers participating in the study which spanned the period of four weeks.

Conclusions; the smoker data collected in this study are in agreement with results found in other project studies. The panelists smoked the cigarettes according to physical properties; i.e., the dilution and the lower RTD of Marlboro Lights caused the smokers to take larger puffs on that cigarette than on Marlboro 85's. The larger puffs, in turn, increased the delivery of Marlboro Lights proportionately. In effect, the Marlboro 85 smoker in this study did not achieve any reduction in smoke intake by smoking a cigarette, Marlboro Lights, normally considered lower in delivery.

Next is Plaintiff's Exhibit 1762 -- 42, I'm sorry. This is an R. J. Reynolds confidential document, Research Planning Memorandum on the nature of the tobacco business and the crucial role of nicotine therein. Signed Claud Teague Jr., April 14th, 1972.

"In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects. Related alkaloids, and probably other compounds, with

desired physiological effects are also present in tobacco and/or its smoke.

Nicotine is known to be a habit-forming alkaloid, hence the confirmed user of tobacco products is primarily seeking the physiological satisfaction derived from nicotine and perhaps other active compounds. His choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements and secondarily by a variety of the other considerations, including flavor, irritancy of the product, social patterns and needs, physical and manipulative gratifications, convenience, cost, health considerations, and the like.

Thus, a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive form. Our industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our company's position in

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our industry is determined by our ability to produce dosage forms of nicotine.

Happily -- happily for the tobacco industry, nicotine is both habituating and unique in its variety of physiological actions. It is safe to

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assume, however, that nicotine will retain its unique position throughout the present ten year planning period, and probably for a much longer span of time.

Before proceeding too far in the direction of design of dosage forms for nicotine, it may be well to consider another aspect of our business; that is, the factors which induce a pre-smoker or non-smoker to become a habituated smoker. Paradoxically, the things which keep a confirmed smoker habituated and "satisfied" i.e. Nicotine, and secondary physical and manipulative gratifications, are unknown and/or largely unexplained to the non-smoker. He does not start smoking to obtain undefined physiological gratifications or reliefs and certainly he does not start to smoke to satisfy a nonexistent craving for nicotine. Rather he appears to start to smoke for purely psychological reasons, to emulate a valued image, to conform, to experiment, to defy, to be daring, to have something to do with his hands, and the like. Only after experiencing smoke for some period of time do the physiological satisfactions and habituation become apparent and needed.

Indeed, the first smoking experiences are

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often unpleasant until a tolerance for nicotine has been developed. This leaves us, then, in the position of attempting to design and promote the same product to do two different types of market.

We have deliberately played down the role of nicotine, hence the smoker has little or no knowledge of what satisfactions it may offer him -- excuse me, the non-smoker, and no desire to try it. Instead, we must somehow convince him with wholly irrational reasons that he should try smoking."

Next is Plaintiff's Exhibit 1766, "some effects of smoking by Murray Senkus. R. J. Reynolds document.

"Each of us -- each of the life processes within our bodies is a complex series of chemical reactions; digesting food, going to sleep, waking up, the process of thinking, reacting to a stressful situation, reacting to a pleasant situation, all these processes are dependent on chemical reactions, and each of these chemical reactions is regulated by a certain key chemical compound.

Talk delivered to RJR Tobacco Marketing and Marketing Research personnel during the latter part of 1976 and early 1977.

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It can be assumed that the amount of nicotine that is required to get the desired effect varies from person to person. But there are ways to increase or decrease the amount of nicotine one can obtain by smoking a single cigarette. One can take

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a deeper puff or shallower puff. One can puff more frequently or less frequently. One can take a deeper puff and hold the smoke in the lungs longer. Without any question, the desire to smoke is based on the effect of nicotine on the body.

The enjoyment of smoking appears to be a hereditary characteristic. A rough approximation is that about one-fourth of the population are hereditarily predisposed to smoking. Some are only mildly hereditarily predisposed, and that is why so many smokers have found it so easy to quit. But it is important to remember that the way your body reacts to nicotine is a hereditary characteristic. Some people have an affinity for nicotine, while others do not crave it.

It is also important to remember that smoking a cigarette is a uniquely effective, rapid, and satisfying way of getting nicotine as compared to chewing tobacco, snuff or smoking a cigar.

In general, a confirmed smoker attempts to get

a certain level of nicotine about one-half hour after smoking, after all the nicotine has been biologically or pharmacologically inactivated. The smoker experiences a need for nicotine and lights up another cigarette."

This next is Plaintiff's Exhibit 1487. This is a Philip Morris document from Dunn to Osdene, proposed study by Levy. "I have given Carolyn approval to proceed with this study --" oh, it's dated November 3rd, 1977.

"I have given Carolyn approval to proceed with this study. If she is able to demonstrate, as she anticipates, no withdrawal effects of nicotine, we will want to pursue this avenue with some vigor. If, however, the results with nicotine are similar to those gotten with morphine and caffeine, we will want to bury it. Accordingly, there are only two copies of this memo, the one attached and the original, which I have."

Next is Plaintiff's Exhibit 2638, Philip Morris U.S.A. Interoffice Correspondence, Dunn to Seligman, The Nicotine Receptor Program, date, March 21, 1980.

"In responding to your query, I am going to first address the more inclusive topic of

psychopharmacology of nicotine. Abood's nicotine receptor program is included, as is the internal nicotine analogue program and the internal animal behavioral program. All three of these efforts are aimed at understanding that specific action of nicotine which causes the smoker to repeatedly introduce nicotine into his body.

The psychopharmacology of nicotine is a highly vexatious topic. It is where the action is for those doing fundamental research on smoking and from where most likely will come significant scientific developments profoundly influencing the industry. Yet it is where our attorneys least want us to be, for two reasons. It is important to have these two reasons expressed and distinguished from one another.

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The first reason is the oldest and is implicit in the legal strategy employed over the years in defending corporations within the industry from the claims of heirs and estates of decreased smokers. 'We within the industry are ignorant of --' quote, we within the industry are ignorant of any relationship between smoking and disease. Within our laboratories, no work is being conducted on biological systems, end quote. That posture has

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moderated considerably as our attorneys have come to acknowledge that the original carte blanche avoidance of all biological research is not required in order to plead ignorance about any pathological relationship between smoke and smoker.

There is an important distinction that has been made here which is well to articulate: The acute, transient, short-lived effects of nicotine upon a physiological system, (among which are those effects or that effect sought by the smoker) are wholly independent of those alleged, cumulative long-term contributions of smoke compounds to disease processes.

We are now being allowed to conduct research on the immediate effects of nicotine because of this distinction. We can work with biological systems. We can inject nicotine in rats and we can perform the surgery required for implanting cannulae. But in doing so, we are engaging in research on the pharmacological action of nicotine, which brings us to the second concern of our attorneys. This is a more recent concern arising from increasingly favorable prospects for the success of a legislative effort to transfer authority for the regulation of tobacco manufacture

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to a federal agency, FDA, known to have interest and powers antithetical -- excuse me, antithetical to the interests of the industry. Any action on our part, such as research on the psychopharmacology of nicotine which implicitly or explicitly treats nicotine as a drug could well be viewed as a tacit acknowledgment that nicotine is a drug. Such acknowledgment, contend our attorneys, would be untimely. Therefore, although permitted to continue the development of a three-pronged program to study the drug nicotine, we must not be visible about it.

Our attorneys, however, will likely continue to insist upon a clandestine effort in order to keep nicotine the drug in low profile.

Now I'm in a position to respond directly to your query about the Abood program. So long as we must be officially heedless of the drug properties of nicotine, and cannot openly communicate with our counterparts in other laboratories and cannot aggressively institute a large-scale neurosciences program on site, then we must have a window to the outside world. Abood's laboratory is that window. Being himself on forefront and knowledgeable of developments as they are occurring in other

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laboratories, he is our informant. We need him for

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that. And it is as simple as that. Whatever else falls out of the program(sic), (a discovery in his lab!) will be a fringe benefit."

Next is Plaintiff's Exhibit 1773. This is a Reynolds document dated September(sic) 1st, 1982. Nordine Study to Dr. G. R. DiMarco.

"Most of the responses we (R&D, RJRT and/or the tobacco industry) should make to the public attitudes reported by Nordine are so obvious that there is no point in my repeating them; e.g., improve social acceptability, develop positive and refute any erroneous negatives in the smoking/health area, improving company/industry images, Etc., etc.

Some other things, perhaps not quite so obvious, need consideration: The total market for cigarettes is projected to be essentially flat over the long term.

About one-third of the adult population is in that market at any given time.

Most of those who have smoked for any significant time would like to stop.

Many, but not most, of those who would like to stop smoking are able to do so.

Thus, the total (transient) market for cigarettes is the result of a dynamic equilibrium with about as many new smokers entering it as confirmed smokers leaving it.

Therefore, we need to focus more effort on adult 'presmokers' and on confirmed smokers who would like to stop smoking.

To do this, we need to know more about why (some) adults begin to smoke, why (most) smokers continue to smoke, why the majority of confirmed smokers would like to stop smoking, why some confirmed smokers are able to stop smoking and others are not able.

However, we cannot ever be comfortable selling a product which most of our customers would stop using if they could. That is to say, if the exit gate from our market should suddenly open, we could be out of business almost overnight.

Some slow but steady 'progress' is being made in developing techniques for stopping smoking; but no universal, easy method is yet in sight.

The probability of such a method appearing in the near term is small.

The probability of such a method appearing over the long term approaches 100 percent.

If/when that occurs, our options include:

Go out of business, find a way to eliminate the desires of smokers to stop smoking. Three, to provide other products away from conventional cigarettes, which meet the same needs cigarettes now meet but without the associated negatives."

Next is Plaintiff's Exhibit 1150. This is another Reynolds document, December 9th, 1981, Mr. Jay Giles, RE: Weekly Highlights.

"Information was obtained that Philip Morris U.S.A. does not live up to the alleged 'gentlemen's' agreement of not having animal

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laboratory facilities on their premises in this country. PM indeed has had such facilities for at least 3-4 years and continues to operate them.

Next is Plaintiff's Exhibit 1519. Philip Morris, Incorporated, Inter-Office Correspondence, Richmond, Virginia, personal and confidential. R.B. Seligman, the Surgeon General's Report - Response, dated February 12, 1981.

"Frequently, and with increasing regularity, major antismoking campaigns are mounted based on insufficient data. It is, therefore, vital that we take a carefully considered approached -- approach to blunt these attacks. It is our opinion that

Philip Morris (or the tobacco industry) take a more aggressive posture to counterattack the antismoking movement. We're suggesting funding studies (primarily outside of the United States) with the intent to publish data which refutes specific assertions by the antismoking forces."

This is another RJR document. This is a letter dated January 11th, 1990.

MR. CHRISTOPHER: Mr. Acosta, do you have a number?

MR. ACOSTA: Yes, it's 219. I'm sorry.

MR. CHRISTOPHER: Thank you.

MR. ACOSTA: January 11, 1990.

"Dear Sir or Madam: The tobacco industry is also concerned about the charges being made that smoking is responsible for so many serious diseases. Long before the present criticism began, the tobacco industry, in a sincere attempt to determine what harmful effects, if any, smoking might have on human health, established The Council for Tobacco Research -- USA. The industry has also supported research grants directed by The American Medical Association. Over the years, the tobacco industry has given in excess of $162 million to independent research on the controversies

surrounding smoking -- more than all the voluntary health associations combined.

Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking."

THE COURT: Mr. Acosta, would this be a good time for a break?

MR. ACOSTA: I have got one more.

THE COURT: Okay.

MR. ACOSTA: This is from Carolyn Levy to William Campbell, Philip Morris USA Interoffice Correspondence, Subject: Smoking Cessation Technology, date, 10/2/92.

"I agree that the market appeal and profit margins of nicotine patches will heighten the already active efforts by drug companies to develop smoking cessation technologies. PM USA's R&D department has been following this area worldwide for many years by monitoring patents, scientific publications, presentations at scientific meetings and news releases, as well as by having discussions with colleagues in the academic community. We

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have -- we have the expertise -- we have the expertise in-house to interpret findings from these

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various sources and predict the potential implications for our business.

In the past, smoking cessation efforts generally have taken four different approaches: Nicotine substitution, blockage of nicotine receptor sites, alleviation of withdrawal symptoms and smoking deterrence using, for example, drugs to change the taste of smoke. Today, nicotine substitution (through skin patches, nasal sprays or inhalers) usually coupled with some kind of behavioral therapy, seems to be the avenue that most drug companies are pursuing.

All available data suggest that nicotine gum/patches, are only minimally effective in helping smokers quit unless combined with behavioral therapy. Despite this, there are reports that many doctors are prescribing patches alone, suggesting that their maximum effectiveness will not be realized. Many people feel that because of the need for behavioral intervention as a component of smoking cessation, which is both costly and time consuming, it is unlikely that a truly effective, readily available, quote, habit breaker, end quote, will be developed."

And that was Exhibit No. 1556.

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This would be a good time.

THE COURT: Okay. We will take our 15-minute morning recess.

THE BAILIFF: All rise.

(A recess was taken, after which the following proceedings were had:)

THE BAILIFF: All rise, please. Circuit court is back in session.

MR. LYDON: Your Honor, I don't know what the flow of things is going to be, but Mr. Acosta showed me an exhibit. It doesn't have a number on it yet, but we are going to have an objection to it. It's a cigarette package, which has an insert on the back; and it's that in particular that we are most objecting to. If we could be heard whenever you want to hear about it, but I don't want the exhibit used until such time as we get an opportunity to argue about it.

THE COURT: Mr. Acosta?

MR. ACOSTA: Well, Mr. Eastman smoked Benson & Hedges Lights, thinking that lights were better. And the package now comes with a -- an insert which says, "If you thought that lights were better for you, we didn't mean to tell you that" -- I'm just paraphrasing this -- "that we didn't mean to tell

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you that." What it meant was that lights just meant they are lighter tasting; and so if you thought that, you shouldn't think it anymore. And that's what the -- it's not a -- a -- it's not a subject of the Labeling Act because it was voluntarily put in the package by the company.

And under Cippolone when a company makes a voluntary assertion or statement -- just like the

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Frank State -- just like the "can we have an open debate type" statement which said, you know, "We still think there is a controversy," et cetera, et cetera -- that was in 1984 -- this is the same kind of thing.

So I don't know exactly -- I mean, I don't have my questions written out. I don't know exactly what the answers are going to be. I don't know exactly how this might come in. But I didn't want -- I wanted to leave the door open if it -- if it is apparent and relevant to the testimony, then I would. If it's not, then I won't. But I think that it has the potential for being relevant. It might be something that I might not use with Mr. Eastman; but then depending on the predicates or foundation he lays, then if it become relevant, then I could show the package insert later.

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THE COURT: Can I cut through all this?

MR. ACOSTA: Sure.

THE COURT: He's not smoking anymore --

MR. ACOSTA: No.

THE COURT: -- correct? He wasn't smoking at the time of this voluntary insert was inserted into the packaging?

MR. ACOSTA: No, but --

THE COURT: Okay. So how is this in the slightest way relevant to Mr. Eastman?

MR. ACOSTA: Well, it is an admission of consumer expectation. You see, from the time the lights came out until 1995, consumers thought that light cigarettes were light in terms of the -- providing tar and nicotine to the smokers. This is an admission that that isn't true.

THE COURT: No, it's a subsequent remedial measure. It's an attempt by the tobacco companies to ward off further litigation. It's -- I don't think it's coming in. We are going to have to have considerable argument from you to convince me that that ought to be permitted to come before the jury in this case. So please don't plan on just waving it around or talking about it before the Court deems that it's absolutely necessary to come in.

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MR. ACOSTA: I won't.

THE COURT: Okay.

Let's bring the jury in. Are we ready for the jury?

MR. WALLACE: Yes, Your Honor.

(The following took place in the presence and hearing of the jury.)

THE BAILIFF: The jury is present and seated, Your Honor.

THE COURT: Thank you, Sheriff.

Mr. Acosta, what's next?

MR. ACOSTA: Your Honor, at this time the plaintiff would like to read some testimony from trial transcripts in the case of Tune versus Philip Morris, Case No. 97-4678CI13, taken on May 20th, 2002.

The witness is Dr. Peter Lipowicz.

MR. LYDON: Who will be testifying.

Thereupon,

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DR. PETER LIPOWICZ,
was called as a witness by deposition and testified as follows:

"QUESTION: Would you state your name, please.
"ANSWER: Peter Lipowicz.
"QUESTION: How do you spell your last name?

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"ANSWER: L-I-P-O-W-I-C-Z.
"QUESTION: Where do you live?
"ANSWER: I live in [DELETED]
.
"QUESTION: Where do you work?
"ANSWER: I work at Philip Morris in Richmond, Virginia, in the research and development facility.
"QUESTION: How long have you been with Philip Morris?
"ANSWER: I have been with Philip Morris for about -- just about over 13 years.
"QUESTION: And when did you start with Philip Morris?
"ANSWER: In 1988.
"QUESTION: What's your current position at Philip Morris?
"ANSWER: I'm a senior principal scientist.
"QUESTION: How long have you been in your current position?
"ANSWER: For about three years.
"QUESTION: Now, would you describe to the jury your educational background.
"ANSWER: I have a bachelor's degree of sci -- I have a Bachelor's of Science degree in chemical engineering from Washington University in St.

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Louis, and I have a Ph.D. In chemical engineering from the University of California at Berkeley.
"QUESTION: Can you tell the jury, Dr. Lipowicz -- excuse me -- Dr. Lipowicz, what your Ph.D. Thesis was about.
"ANSWER: My Ph.D. Thesis was about smoke produced from smoldering porous fuels, and that is natural material that burns without a flame. That's what smoldering means.
"QUESTION: You, as I understand it, graduated from college sometime in the early '80s, got a Ph.D. Around 1986, and then went to work for Philip Morris in either '88 or '89; is that about right?
"ANSWER: Yes.
"QUESTION: And you have been working now with Philip Morris for about 13 years or so?
"ANSWER: Correct.
"QUESTION: And in your job you are in the research and development department at Philip Morris; is that correct?
"ANSWER: Well, it's called "research, development, and engineering."
"QUESTION: Research, development, and engineering? And you deal primarily with cigarettes at Philip Morris; true?

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"ANSWER: Yes. We are a cigarette company, and that's our product.
"QUESTION: Do you know when Philip Morris developed a research -- a research department?

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"ANSWER: It was around 1953, 1954.
"QUESTION: Well, that's what I'm asking you.
"ANSWER: I have reviewed, you know, documents after 1954 indicating that there were attempts, you know, some kind -- showing some of the research that was done to reduce harmful compounds.
"QUESTION: So in doing that, then, they would have had to form an opinion that something was potentially harmful in the cigarettes that could cause injury to human beings; is that true?
"ANSWER: Well, I think the key word that you mentioned was "potential." So, I mean, things could be suggested and -- you know, as being -- I mean, a good practice would be to test -- test out things that are suggested.
"QUESTION: And some of the things that they found in the cigarette back in the mid-1950s were substances that would caused or were thought to cause cancer; is that true?
"ANSWER: Well, what they -- what they found were -- you know, were chemicals that -- you know,

were suspected, as you said -- suspected carcinogens.
"QUESTION: Well, you would agree that today Philip Morris believes there is, what, at least 58 carcino " --
MR. ACOSTA: Excuse me. Let me start over.
"QUESTION: Well, you would agree that today Philip Morris believes there is, what, at least 58 carcinogenic compounds in cigarette smoke?
"ANSWER: I mentioned that we had 54 compounds that we are trying to reduce. I would like to point out that, you know, there are different kinds of carcinogens. Not everything on the list is carcinogenic; so even though smoking causes cancer, one just doesn't look at the carcinogens to remove. For example, we want to remove carbon monoxide, which is not implicated in lung cancer, but perhaps in heart disease.
"QUESTION: Well, for now let's talk about some of the compounds. There are polycyclic aromatic hydrocarbons in cigarette smoke?
"ANSWER: That's correct.
"QUESTION: And it appears that there is at least 10 of them which are listed as carcinogenic. Is that -- do you agree with that?

"ANSWER: I mean, there are many -- you know, about 300, I would say, polycyclic aromatic hydrocarbons in smoke. I'm definitely familiar with a couple of them as carcinogenic. And I wouldn't -- you know -- it wouldn't surprise me if some of those PAHs were carcinogenic. We have a specific list. I don't have it in front of me. The number of PAHs are probably 10 or a dozen.
"QUESTION: So you will agree that there are 10 to a dozen, something like that. Then there is another group called heterocyclic compounds. Do you know what those are?
"ANSWER: Yes.
"QUESTION: Those are carcinogens as well, aren't they, some of them?

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"ANSWER: I mean, not all heterocyclic compounds are carcinogens, so we have different chemical classes.

"QUESTION: Now, there are six of them in cigarette smoke that are carcinogenic.

"ANSWER: That's right.

"QUESTION: And then we have got nitrosamines which you talked about; right? Those are nicotine specific; aren't they.

"ANSWER: Well, they are nicotine specific --

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excuse me -- well they are tobac -- sorry. They are tobacco specific nitrosamines. I mean, that is, they are nitrosamines that are produced from a lot of different sources. They are produced from organic material containing nitrogen; but there are certain ones that are only found in tobacco, so those are tobacco-specific nitrosamines.

"QUESTION: Okay. Well, they are called NNK and NNN.

"ANSWER: Yeah. There is NAB and NAT. These are established to be tobacco-specific nitrosamines.

"QUESTION: And then there is at least ten of them in there; isn't there?

"ANSWER: The ones that -- the ones that we measure that had been identified, you know, by the public health authorities for removal especially are those -- are the four. Those are the ones we work on, NNK and NNN. There are some of them that are removed fairly effectively. They are volatile, volatile nitrosamines.

"QUESTION: And some that aren't?

"ANSWER: There are some that aren't. Cigarette smoke does contain nitrosamines.

"QUESTION: And then there is another group

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called aromatic amines or amines -- how do you pronounce that?

"ANSWER: Amines.

"QUESTION: It looks like there are at least four carcinogenic amines in cigarette smoke.

"ANSWER: Yeah.

"QUESTION: Do you agree with that?

"ANSWER: I don't have the list in front of me specifically as to what all the compounds are. I know that the sorts of compounds are on our 54.

"QUESTION: All right. There is something called anheterocyclic amine. What is heterocyclic amine?

"ANSWER: Well, a heterocyclic molecule is one that contains -- doesn't just have carbon, it might have another atom like nitrogen.

"QUESTION: And there are about eight or so of them that are carcinogenic in cigarette smoke?

"ANSWER: Well, like I said, I don't have that list. I know that some of those compounds are on our list. I would like to point out that not everything that's on our list is there because it's carcinogenic. That might surprise some people, but it's not just the carcinogens that could cause cancer. There are other mechanisms like promoters

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that would irritate the lung that we are trying to remove.

"QUESTION: The irritants themselves can lead to cancer; true?

"ANSWER: I don't have a detailed understanding of all the mechanisms, but it's clear that there are irritants in smoke, like formaldehydes, that can damage cells. There are some theories that might lead to cancer.

"QUESTION: Well, let's stick with cigarettes now. You said that there is no such thing as a safe cigarette?

"ANSWER: That's correct.

"QUESTION: And there never has been any such thing as a safe cigarette, has there?

"ANSWER: That's correct.

"QUESTION: You said that the cigarette is inherently dangerous?

"ANSWER: That's correct.

MR. ACOSTA: That's all I have for Dr. Lipowicz, Your Honor.

THE COURT: Any additional portions of the witness's testimony?

MR. LYDON: No, Your Honor. As I said, we're bringing Dr. Lipowicz in.

THE COURT: Okay. You may stand down.

Call your next witness.

MR. ACOSTA: Your Honor, I'm going to publish some Brown & Williamson documents and American Tobacco Company.

THE COURT: All right.

MR. ACOSTA: This is Plaintiff's Exhibit 1254.

MR. WALLACE: Did you say 1254, Mr. Acosta?

MR. ACOSTA: Yes.

The American Tobacco Company, Office of the President, February 5, 1958. Mr. John W. Hill, Hill and Knowlton, Inc.

"Dear Mr. Hill: I have studied the questionnaire which you gave me and others last Friday in -- "

(Pause.)

MR. ACOSTA: I have another projector at my office, Judge -- oh, it's coming back up.

"Dear Mr. Hill: I have studied the questionnaire which you gave me and others last Friday in an effort to determine the views of the directors of the Tobacco Institute on certain important questions of policy to which answers are needed in order to formulate the public relations policy of -- policies of the Institute.

In my opinion, the Institute's major area of activity and major objective should be:

To defend the tobacco industry against attacks from whatever source on tobacco as an alleged health hazard, including efforts to impose labeling requirements on tobacco products based directly or indirectly on the charge that tobacco is a hazard to health.

In the present state of the evidence, the position of the Institute should be compatible with that of the TIRC and SAB to the same degree of

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compatibility as is represented by the publication 'Tobacco and Health'.

By way of simplification of the foregoing:

The position of the SAB, to date, is that 'Science does not yet know the answer to the question whether tobacco is a health hazard; further research is needed.' (In recent weeks, Dr. Little has countenanced and participated in a somewhat more affirmative approach; basically, however, this remains the official SAB attitude.)

The position of the TIRC is more affirmative in the direction of disputing the validity of the charges made; but nevertheless limited and restrained by its association with SAB, which is a

part of TIRC.

The position of the Tobacco Information Committee, representing the interests that support TIRC, but not speaking for TIRC as such, is an affirmative presentation of material which rebuts and discredits the charges.

What is to be the Institute's position on such specific matters as labeling contents of cigarettes, putting on warning labels, adding punitive taxes to discourage consumption?

Matters such as labeling contents of cigarettes, putting on warning labels, adding punitive taxes to discourage consumption all arise out of the charges that tobacco is a health hazard.

The Institute's position on all such matters should be that it has not been proved that tobacco is a health hazard, that its use is a universal pleasure in relaxation, that many hundreds of thousands of people depend on it for their livelihood; and that any step in the direction of discouraging the consumption of tobacco is unjustified and harmful.

Sincerely, Paul Hahn, president.

Copies to Mr. Bowman Gray, president, R. J. Reynolds Tobacco Company, Mr. Francis H. Horan,

vice president of Liggett & Myers Tobacco Company, Mr. Joseph Cullman, III, president, Philip Morris, Inc., Mr. Lewis Gruber, president, P. Lorillard Company, Mr. J. Whitney Peterson, president, United States Tobacco Company, Mr. Emery A. Lewis, president, Brown & Williamson Tobacco Company, Mr. T.V. Hartnett, chairman, Tobacco Industry Research Committee."

Next is a Brown & Williamson memo. It's dated July 1963 from Addison Yeaman to his file, Implications of Patel, Hippo I and II and the Griffith Filter.

"The TIRC cannot, in my opinion, provide the vehicle for such research. It was conceived as a public relations gesture and however undefiled the scientific advisory board and its grants may be, it has functioned as a public relations operation. Moreover, its organization, certainly in its present form, does not allow the breadth of research, cancer, emphysema, cardiovascular disorders, et cetera, essential to the protection of the industry.

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The Surgeon General's report will, of course, set off attacks all along the line. Our harsher critic, Senators Moss and Newberger, the American

Cancer Society, et. al., will immediately press for all sorts of restrictive and repressive programs.

To meet these tests -- excuse me, to meet these threats, which will arise not merely at the Federal but at the State level as well, the Tobacco Institute is available, even to outline the possible defensive and offensive programs the institute might engage in to meet the dangers I have prophecies is far beyond the scope of this note.

Moreover, nicotine is addictive.

We are -- we are then in the business of selling nicotine, an addictive drug, effective in the release of stress mechanisms. But cigarettes, we will assume the Surgeon General's committee to say, despite the beneficent effect of nicotine have certain unattractive side effects. They cause or predispose to lung cancer. They contribute to certain cardiovascular disorders. They may well be truly causative in emphysema, etc., etc. We challenge those charges."

Next is Plaintiff's Exhibit 1091. This is dated February 28, 1966. It's a letter to A.D. McCormick, Esquire, British-American Tobacco Company, Limited, private and confidential. And

it's from Addison Yeaman with a copy to Mr. Finch.

"First of all, there is considerable interest, not to say concern, on this side as to the report Harrogate may make of its activities in progress at the end of its first three years. I certainly have no intention of reviving the old argument which (oversimplified) centers around Harrogate's emphasis on biologic activity of tar or smoke ingredients, assayed by animal skin painting.

We are troubled lest that approach be taken to concede a significant causal relation between the use of tobacco and cancer of the lung. To reassure you, I have no intention of agitating the question, but the difference existing, we would hope to be afforded the opportunity of consulting with the people on your side concerning the way Harrogate's work is presented, admittedly with the hope of 'slanting' the report.

This means that the political pressures will be heavily directed at more legislation -- I can't read that word -- legislation seriously affecting our business and the way we conduct it. The medical testimony we were able to present at the Congressional Committee hearings in 1964 served effectively to limit the requirements of the

statute ultimately passed to the requirement of a warning notice on the package.

We are going to have to make a persuasive presentation of, one, valid impeachment of existing statistical data and epidemiologic studies as well, as much of the available clinical work, (e.g. Auerbach); evidence of the accelerated research and

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the results thereof on our part and, finally, and only hopefully, some -- yeah, some strong rebutting research results.

With this background in mind -- excuse me --with this background, remember that the cigarette companies in the U.S. have given the prime responsibility in the health area to their lawyers in every case, save that of Lorillard, each of the General Counsel is Vice President and a member of the Executive Committee of his respective company.

In each of the six companies, including Lorillard, both day-by-day decisions and policy directions are in the first instance in the province of the lawyers, subject always, of course, to the ultimate authority of their Presidents and Boards of Directors.

We would suggest, therefore, that (save for Ed

Finch, who would head the group as Chairman of the Executive Committee of the Tobacco Institute) we would not expect to include "the executive heads" of any of the U.S. companies. Certainly Ed, as president of B&W and chairman of TI, can handle all of the contact at his level and we lesser-lights can do the work.

We agree with you that the party should be kept workably small and that it is desirable the group include a representative from Reynolds. This immediately raises the question of rivalries and perhaps the inclusion of Ramm would almost automatically require an invitation to Hetsko. I would like to include a member from our Ad Hoc group, and since Jacob is on retainer from both RJR as well as B&W, I give him the nod."

Next is Plaintiff's Exhibit 831. This is Brown & Williamson Tobacco Corporation, Louisville, Kentucky, internal correspondence from Dr. R.B. Griffith to E.P. Finch, August 9, 1967.

"You have raised a question concerning the following sentence in Dr. Johnson's report of his visit to England. Quote, in this respect it is interesting to note that cigarettes with potassium carbonate added to the tobacco, not steamed, give a

substantially reduced 3, 4-benzopyrene yield in the smoke, but incomplete Janus testing of the smoke indicated significantly increased tumor -- tumorigenicity.

This sentence refers to work which has been conducted at both Harrogate and by our friends in Germany. Both have found a five percent addition of potassium carbonate to the total blend results in a marked increase in tumorigenicity of condensate. This is true even though there is a marked reduction in the yield of tar and 3, 4-benzopyrene as a result of potassium carbonate addition.

These results would certainly indicate that reduction of benzopyrene does not necessarily result in a reduction in mouse skin activity, even though Wynder and others might like to think this is true, actually the data from the initial

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Harrogate experiment would indicate that the benzopyrene fraction can account for, at most, one-third of the activity of the total condensate.

I personally feel that far too much attention has been given to 3, 4 benzopyrene and other polycyclic hydrocarbons in England and elsewhere and not enough attention has been given to other

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materials which are probably of greater importance."

This is a Brown & Williamson document, June 13, 1967.

MR. WALLACE: Exhibit number, please?

MR. ACOSTA: Exhibit 828.

"June 13th, 1967, company statement, Cigarettes and Health, second draft.

"In view of -- in view of the concern by many regarding the health of cigarette smokers, Brown & Williamson is constantly on the alert for new knowledge from our laboratories and elsewhere about anything that might be harmful in cigarettes. We have found no connection between cigarettes and any sickness, nor has anyone else.

"Charges against nicotine, tar, phenol, et cetera, have led to efforts to eliminate or filter these elements without detecting -- without detracting from the pleasure of smoking. Brown & Williamson will continue to make cigarettes that reflect the best and most advanced tobacco knowledge. At the present time, however, no scientific evidence indicates that normally strong people require a cigarette substantially different from those we are now making."

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This is Plaintiff's Exhibit 2052. This is a letter, "American Brands, Inc., Office of" -- can't read that word. "February 1st, 1971." It's signed by Robert Heimann, president.

"Memorandum to Mr. Herbert Walker, chairman of the board and chief executive officer. Subject, research proposal to the tobacco industry on immunologic aspects of cancer.

"As discussed, I have given careful thought to the subject proposal and have concluded that there are many things wrong with it. Some of them are: Once we start subsidizing a potential cure for cancer, we are well on the way toward assuming responsibility for the disease. This completely undercuts our position that tobacco smoke has not been proved to be a cause of lung cancer. It also leaves us vulnerable to the question, 'Why are you supporting attempts to cure or diagnose lung cancer to the exclusion of laryngal cancer, bladder cancer, emphysema, heart diseases?' and on and on."

Last is Plaintiff's 942. This is a Brown & Williamson document dated August 24th, 1978, "future consumer reaction to nicotine.

"Very few consumers are aware of the effects of nicotine, i.e., its addictive nature and that

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nicotine is a poison."

That concludes the publication of the Brown & Williamson documents.

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At this time plaintiff would like to play a -- show a deposition of Robert Heimann that was taken in 1986.

THE COURT: Very well.

MR. ACOSTA: Yeah, we just need to reconnect the cord. Could we have that light?

THE BAILIFF: Absolutely.

(Thereupon, the video of Robert Heimann was played for the jury.)

MR. LYDON: Your Honor, can we switch projectors?

THE COURT: Okay. How long is that going to take?

MR. LYDON: Four or five minutes.

THE COURT: Let's give the jury a five-minute break for technical purposes.

(Pause.)

THE COURT: Are we squared away technically?

MR. LYDON: Yes. We had to swap it out because it was overheating.

THE COURT: Okay. Let's get the jury in.

(The following took place in the presence and

hearing of the jury.)

THE BAILIFF: The jury is present and seated, Your Honor.

THE COURT: All right. Proceed.

MR. DENSON: We are going to turn the rest of the lights down.

(The video was continued.)

MR. ACOSTA: I don't know whether Your Honor wants to break for lunch right now or whether you wanted to go forward. If we were going to go forward, I have a slide presentation of some American advertising to go probably 10, 15 minutes maybe. I wanted to say something before the lights came down.

THE COURT: Okay.

MR. ACOSTA: Whatever the Court's pleasure is.

THE COURT: Well, if it is going to be a short presentation, we will proceed with it.

MR. ACOSTA: "So friendly to your taste. Pall Mall presents Girl Watcher's Guide."

"Oh you kids, lucky droodles, Lucky Strike. Luckies taste better. Guard against throat scratch. So friendly to your taste."

"Reward yourself, Pall Mall."

A report to doctors published in leading

medical journals. A report on the double filtering action, king size filter tip, Viceroy.

"Get the honest taste of Lucky Strike."

"L-S-M-F-T, Lucky means fine tobacco."

"Men into space."

That concludes the presentation, Your Honor.

THE COURT: That was fairly short.

Okay. Well, we will go ahead and take our lunch and recess and plan on starting back up at 1 o'clock. What are we anticipating is going to happen?

MR. ACOSTA: We have one fairly short deposition to read, and then Mr. Eastman will take the witness stand.

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THE COURT: Mr. Eastman will testify. Okay.
THE BAILIFF: All rise, please. Court will be in recess until 1 o'clock.
(A lunch recess was taken at 11:42 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, BETH L. BILLINGS, RPR, Deputy Official Court Reporter, in and for the Six Judicial Circuit, State of Florida:
DO HEREBY CERTIFY that the foregoing proceedings were had at the time and place set forth in the caption thereof; that I was authorized to and did stenographically report the said proceedings and that the foregoing pages, numbered 2867 through 2934, inclusive, is a true and correct transcription of said stenographic report.
IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 26 day of March , 2003, at St. Petersburg, Pinellas County, Florida.

_____
BETH L. BILLINGS, RPR

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